not the Authority that made the decision to dismiss the plaintiff only at the hearing when he was cross-examining the Deputy Director, Staff & Training. In any case he submitted this point need not be pleaded as the plaintiff had already pleaded that he was wrongfully dismissed, but if the court was of the view that it should have been pleaded then he asked for leave to amend the plaintiff's pleadings.

I was of the view that this point should have been pleaded and that the plaintiff should not at this late stage be allowed to amend his pleadings as there was no strong justification for doing so. The plaintiff could easily have ascertained well before the trial whether the decision to dismiss him was made by the Authority. In any case the application for leave to amend the pleadings should have been made after it came out in evidence that the decision to dismiss was not made by the Authority. There has been ample opportunity for the plaintiff to make his application well before the close of the defendant's case.

In passing I may add that there is provision in the Port of Singapore Authority Act for the Authority to delegate to any employee of the Authority their power to dismiss (paragraph 14(2) of the First Schedule).

For these reasons the plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Rodyk & Davidson.*

HOLIDAY INNS INC. & ANOR. v. HOTEL ENTERPRISES, LTD.

[O.C.J. (Chua J.) April 4, 1975]

[Singapore — Motion in Suit No. 3615 of 1974]

Practice and Procedure — Injunction — Interim application — Application for injunction to restrain defendants from terminating agreement — Principles on which court acts in granting or withholding interlocutory relief — Preservation of status quo taken into consideration.

The plaintiffs and the defendants entered into an agreement whereby the first plaintiffs were to manage a hotel. The benefit of the said management agreement was subsequently assigned to the second plaintiffs, a wholly owned subsidiary of the first plaintiffs. The defendants were dissatisfied with the management of the hotel and sought to terminate the agreement. There were some exchanges of correspondence between the defendants and the first plaintiffs over the said management resulting in the defendants giving the first plaintiffs a "grace period" of 1 month to wind up the first plaintiffs' operation. On expiry of the said period, the defendants took over the management and removed the first plaintiffs' signs.

In a previous action brought by the plaintiffs, the court ordered an interim injunction restraining the defendant from interfering with the second plaintiffs in the performance of their duties under the management agreement.

The plaintiffs applied for an order, *inter alia*, that the court allow the continuance of the said injunction against the defendants.

Held: (1) in an application for the interlocutory injunction the applicants must establish a probability or a strong *prima facie* case that they are entitled to the right whose violations they complain and, subject to this being established, the governing consideration is the maintenance of the status quo pending the trial;

(2) the management agreement in this case was not a contract of service nor was it a contract involving personal service. It was an agreement which the court could specifically enforce;

(3) having regard to the nature and scope of the management agreement, damages would be an inadequate remedy and the balance of convenience was clearly in favour of the plaintiffs;

(4) in the circumstances the balance of justice was in favour of restraining the defendants pending the trial preventing the plaintiffs from managing and operating the hotel under the management agreement.

Cases referred to:-

(1) *Jones* v. *Pacaya Rubber & Produce Co. Ltd.* [1911] 1 K.B. 455.

(2) *Harman Pictures N.V.* v. *Osborne & Ors.* [1967] 2 All E.R. 324.

(3) *Donmar Productions Ltd.* v. *Burt & Ors.* [1967] 2 All E.R. 338.

MOTION IN SUIT.

A. C. Fergusson for the plaintiffs.

R. K. Booker (*Michael Hwang* with him) for the defendant.

Chua J.: The first plaintiff is a company incorporated in the State of Tennessee, United States of America, and carries on business as the owner or operator of a worldwide chain of hotels each of them is named a "Holiday Inn". The second plaintiff is a company incorporated in the State of Tennessee, United States of America, and is a wholly owned subsidiary of the first plaintiff and has a registered office in Singapore.

The defendant is a public company incorporated in Singapore and all the corporate shareholders are members of the "Goodwood Group" whose assets include a chain of hotels in Singapore.

On September 1, 1971, the first plaintiff and the defendant entered into an agreement (hereinafter called "the Management Agreement"), whereby the first plaintiff is to manage a hotel which was then under construction by the defendant at Scotts Road, Singapore.

The hotel was opened on March 22, 1974, as a Holiday Inn but the parties agreed that April 1, 1974, would be the opening date for the purpose of the Management Agreement.

The benefit of the Management Agreement was assigned by the first plaintiff to the second plaintiff by an assignment dated October 31, 1974, with effect from December 28, 1973.

In May 1974, the defendant approached the first plaintiff for a reduction of the first plaintiff's management fees as provided for in the Management Agreement. Discussions took place between the representatives of the defendant and the first plaintiff with regard to the reduction in the management fees. In September 1974, the first plaintiff made an offer to reduce the management fees but that offer was not accepted by the defendant.

From October 28, 1974, to November 11, 1974, the defendant wrote many letters to the first defendant and to the Innkeeper, Mr. J.P. Pennells, alleging fraudulent management and breaches of the Management Agreement by the first plaintiff, and expressing dissatisfaction with (1) the day to day operation of the

hotel; (2) the management of the hotel and (3) the key personnel at the hotel including the Innkeeper, Mr. Pennells. The defendant on several occasions intimated that it could see no reason why it should not terminate the Management Agreement forthwith.

On November 11, 1974, Mr. Pennells was handed a letter from the defendant purporting to suspend him from duty as Innkeeper of the hotel and indicating that steps were being taken to terminate his services. Mr. Pennells was allowed to clear his desk in the office of personal effects and thereafter he was denied access to his office. Mr. Allen Goh, who was then the next most senior member of the hotel staff, was appointed by the defendant to act as the manager.

Subsequently representatives of the defendant and the plaintiffs met in an attempt to resolve their difficulties but with no success.

On November 30, 1974, the defendant sent a telex message to the first plaintiff stating that they considered the Management Agreement terminated and saw no reason to continue further discussions and giving the first plaintiff one month in which to wind up its operations in the hotel and in the meantime to make arrangements to remove all the plaintiff's signs from the defendant's property.

The first plaintiff replied that it considered the Management Agreement to be valid and binding and said that further consideration of the situation was warranted and requested the defendant to recall its telex of November 30 or suspend its effect for a period of three months.

On December 3, 1974, the defendant by telex to the first plaintiff said that it had decided to stand by its telex of November 30 and as the first plaintiff had not accepted the defendant's offer of a "grace period" of one month to wind up the first plaintiff's operations in the hotel the first plaintiff left it with no alternative except to take over the management and remove the first plaintiff's signs which the defendant did on the same day.

On December 3, 1974, the plaintiffs commenced an action for

(1) a declaration that the Management Agreement is in full force and effect;

(2) specific performance by the defendant of all terms and conditions of the Management Agreement;

(3) an injunction to restrain the defendant from interfering with the second plaintiff in the performance of its duties as Manager under the Management Agreement.

The plaintiffs also obtained on the same day an interim injunction restraining the defendant from interfering with the second plaintiff in the performance of its duties as Manager under the Management Agreement until after the hearing of a Motion returnable on December 16, 1974.

By an order of Court dated December 17, 1974, the interim injunction was varied and continued until the hearing of the Motion fixed for hearing early in January 1975.

The Motion, which came before me, is for an order that the interim injunction granted on December 3, 1974, be continued until after the trial of this action.

By the Management Agreement it was provided, *inter alia*, as follows:—

(1) That the first plaintiff should take over the management and operation of the hotel on the day when the hotel should first open to the public and commence business and should continue with the management thereof under the terms and conditions of the Management Agreement for a period of 20 years (unless sooner terminated as therein provided) with the right to renew the Management Agreement for three periods of ten years each.

(2) That the defendant would complete the construction and furnishing of the hotel at its own expense in accordance with the provisions contained in the Management Agreement.

(3) That the first plaintiff would operate the hotel as a Holiday Inn at the expense of the defendant and, so far as practicable, to do so in accordance with the procedures, practices, management technique and other rules of operation used by the first plaintiff in the operation of its other company-operated Holiday Inns.

(4) That the defendant would not interfere or involve itself in any way with the day to day operation of the hotel. The defendant may, however, at any time address itself directly to the first plaintiff on any matter connected with the hotel.

(5) That the "Manager will hire, supervise, direct the work of, and discharge all personnel working on the premises. Manager is to be the sole judge of the fitness and qualification of such personnel and is vested with absolute discretion in the hiring and discharging and supervision and direction of such personnel during the course of their employment in the operation on the premises. However, all key personnel shall also be and remain satisfactory to owner. It is expressly understood and agreed that all such personnel, including the innkeeper, are in the sole employ of owner and are not in the employ of manager. Manager is in no way liable to said personnel for their wages or or compensation nor to the owner or others for any act or omission on the part of such personnel. However, manager shall have the option to pay the innkeeper's salary, benefits or other compensation for which manager shall be reimbursed by owner. Owner shall not interfere with or give any orders or instructions to personnel, employed on the premises. Manager shall be responsible for and shall pay its own employees who are engaged in the performance of duties imposed under this agreement.

Manager will consult and coordinate with owner on general personnel policies and compensation levels, however, manager shall have the ultimate discretion to establish its own policies and compensation levels for the premises."

(6) That the first plaintiff is authorised to make and enter into in the name of, for the account of, and at the expense of the defendant all such contracts and agreements as are necessary for the operation and maintenance of the hotel and to pay the same when due.

(7) That the defendant would establish a special bank account in its name with the first plaintiff being the only party authorised to draw from the said account.

(8) That the defendant would pay the first plaintiff management fees and other sums in accordance with Articles X and XI of the Management Agreement.

(9) That the first plaintiff would maintain adequate books and records in connection with its management and operation of the hotel at the sole cost and expense of the defendant. Such books and records were to be kept in accordance with good accounting principles and should be maintained at all times in the hotel. The defendant would have the right and privilege of examining the said books and records at any and all reasonable times.

(10) That the Management Agreement might be terminated by the first plaintiff and the defendant, at their option in the event of

(a) certain occurrences relating to the bankruptcy or insolvency of the other;

(b) breach, default or non-compliance by the other with any covenant contained in the Management Agreement followed by written notice from one to the other and failure of the other to remedy or correct such breach, default, or non-compliance within thirty days after receipt of such notice.

(11) That the Management Agreement should be binding and inure to the benefit of the parties thereof their heirs, executors, successors and valid assigns and that the Management Agreement might be assigned by the defendant or by the first plaintiff to any of its subsidiaries or affiliates without notice to or approval by the other.

The plaintiffs contend that the history of the negotiations between the first plaintiff and the defendant for a reduction of the first plaintiff's management fees clearly shows that the allegations of mismanagement were not made in good faith on matters of real substance going to the root of the Management Agreement but were trumped up for the purpose of providing an excuse for the defendant to break the Management Agreement. The plaintiffs further contend (1) that any purported due breach has been cured or that the plaintiffs have taken all steps within their power to cure the same; and (2) that the purported breaches have been acquiesced in or waived by the defendant.

The defendant listed a number of irregularities which it says constitute either breaches of the Management Agreement or examples of mismanagement by the plaintiffs which entitle it to terminate the Management Agreement. They are to put it shortly these:—

(1) Under Article IX of the Management Agreement all moneys of and relating to the business of the hotel were to pass through a bank account to be opened in the name of the defendant with the first plaintiff as sole signatory to the said bank account but the moneys of the said business had been deposited in the name of the second plaintiff who had never been authorised by the defendant to handle any moneys of the said business. It was only after the defendant had caused a writ to be issued against the second plaintiff claiming an account of all moneys wrongfully appropriated by the second plaintiff and damages for conversion that the second plaintiff commenced to transfer such funds into the defendant's bank account operated by nominees of the first plaintiff.

(2) A contract and a lease relating to the hotel and its business have been entered into by the second plaintiff in its own name without the authority or approval of the defendant contrary to Article VI of the Management Agreement.

(3) The business of the hotel has been carried on in the name of "Holiday Inn, Singapore" and/or "Holiday Inn (Singapore) Incorporation" and letterheads, invoices, cash memos, cheques and receipts have been issued in these names contrary to the provisions of section 121 of the Companies Act(Cap. 185). The defendant says that the hotel is part of its business and the business of the hotel should be carried on in its name and not that of Holiday Inn.

(4) There had been an excessive granting of complimentary accommodation by the Innkeeper or the employees of the first plaintiff, such accommodations frequently being given in the interests of the first plaintiff rather than the defendant.

(5) Certain payments were charged to expenses in the hotel's accounts which should have been charged to and recovered from the hotel's executive management personnel.

(6) There was a considerable discrepancy between the guests as recorded in the front office records of the hotel and the records maintained by the housekeeping staff. On a number of occasions it appeared that more people had occupied rooms than had been registered at the front office thus causing a loss of revenue and a breach of the Hotels Licensing Regulations, 1971.

(7) The security system in the hotel has been extremely lax resulting in free access to the hotel and to guests' rooms by unregistered female guests. The danger of such lax security are *inter alia* (a) the risk to property of guests and of the hotel; (b) the defendant is liable to prosecution under the Hotels Licensing Regulations, 1971; (c) the adverse effect on the reputation of the hotel and (d) the cancellation of the registration of the hotel under the Hotel Act (Cap. 248).

(8) The first plaintiff had used defendant's employees to carry out work on behalf of the first plaintiff in connection with "Holiday Inns" projects other than the hotel of the defendant without the authority of the defendant.

(9) There has been considerable laxity in maintenance of records of the tools and equipment of the hotel resulting in a lack of stock and inventory control.

(10) The first plaintiff (or the second plaintiff) has purported to employ one Mr. Steven Tan as Executive Assistant Manager. Notwithstanding the defendant's objection to the employment of Mr. Steven Tan he has been allowed to exercise excutive functions in the hotel and to draw salary and enjoy other service benefits. Under Article V of the Management Agreements all key personnel of the hotel "shall be and remain satisfactory" to the defendant.

(11) The Innkeeper, Mr. Pennells, refused to allow the defendant's representatives to have access to the personal files of key executive staff of the hotel who are employees of the defendant. This is a breach of Article XII of the Management Agreement.

(12) The Innkeeper, Mr. Pennells, had made available the accounts and other books and records of the business of the hotel for the inspection of Messrs. Arthur Anderson & Co., Public Accountants, for the purpose of auditing of the "Managers Accounts" of the hotel, without the defendant's knowledge or approval.

(13) Under Article V of the Management Agreement the first plaintiff is required to consult and co-ordinate with the defendant on general personnel policies and compensation levels. Without consulting the defendant the first plaintiff commenced negotiations with the Trade Union representing the hotel staff on staff remuneration and benefits. When the defendant came to know of these it wrote to the Innkeeper requesting him to consult and co-ordinate with the defendant's representative. However, before the defendant had appointed its representative the first plaintiff had already on behalf of the defendant made certain verbal commitments to the said union without consulting the defendant, thereby prejudicing the position of the defendant as employer in any future negotiations with the said union.

The principles on which the court acts in granting or withholding interlocutory relief have been stated and restated in several English decisions and I need only to refer to three of them.

Buckley L. J. in *Jones* v. *Pacaya Rubber & Produce Co. Ltd.*[1] said (at page 457):

"The plaintiff now asks the court to grant an injunction until the trial to restrain the defendant company from forfeiting the shares. The question is, there being certainly a case to be tried, what is the proper order to make? In all cases of applications for interlocutory injunction the governing principle is that pending the settlement of the dispute between the parties the court will as far as possible keep matters in *status quo*."

In *Harman Pictures N.V.* v. *Osborne & Ors.*,[2] it was held that:

"in granting or withholding interlocutory relief the court would have regard to the balance of convenience but the governing consideration was the preservation of the *status quo*."

Ungoed-Thomas J. in *Donmar Productions Ltd.* v. *Burt & Ors.*,[3] said (at page 339):

"So in an application for the interlocutory injunction the applicant must establish a probability or a strong *prima facie* case that he is entitled to the right of whose violations he complains and, subject to this being established, the governing consideration is the maintenance of the *status quo* pending the trial.

It is well established that in deciding whether the matter shall be maintained in *status quo* regard must be had to the balance of convenience and to the extent to which any damage to the plaintiff can be cured by payment of damages rather than by the granting of an injunction."

The principles are also stated in *Kerr* on Injunctions, 6th Edition as follows (at page 2):—

"The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to keep matters in *status quo* until the hearing or further order. In interfering by interlocutory injunction, the court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial question to be tried, and that till the question is ripe for trial, a case has been made out for the preservation of the property in the meantime in *status quo*. A man who comes to the court for an interlocutory injunction, is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges, and can satisfy the court that the property should be preserved in its present actual condition, until such question can be disposed of."

and also at page 15:

"In exercising the jurisdiction, the court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established. The court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the court for the protection of the property in question until the legal right can be ascertained. The office of the court to interfere being founded on the existence of the legal right, a man who seeks the aid of the court must be able to show a fair *prima facie* case in support of the title which he asserts. He is not required to make out a clear legal title, but he must satisfy the court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent. The court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, be satisfied that the probability is in favour of the case ultimately failing in the final issue of the suit. The mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing the injunction, though if it is always a circumstance which calls for the attention of the court."

The Court has been taken through the numerous affidavits filed by both parties and the numerous exhibits exhibited to those affidavits. I am satisfied that there is a substantial question to be tried at the trial whether the plaintiffs have committed a breach of the terms of the Management Agreement which entitles the defendant to terminate the said agreement. It has not been shown to me that there is a plain and uncontested breach of the terms of the Management Agreement by the plaintiffs. It is impossible to say until the trial that the defendant is entitled to terminate the Management Agreement. The plaintiffs have established a strong *prima facie* case in support of their right which they assert and there is a probability that the plaintiffs will succeed in establishing at the trial that the defendant has wrongfully purported to terminate the Management Agreement.

The defendant further submits that the plaintiffs are not entitled to the relief prayed for because the Management Agreement is a contract of personal service and that as a general rule such a contract will not be specifically enforced by the court against either party nor will an injunction be granted having the effect of compelling specific performance of such a contract.

I am unable to agree with this submission.

In this case the relationship between the first plaintiff and the defendant under the Management Agreement is not the ordinary relation of master and servant nor is it a contract involving personal service. One has only to look at some of the articles in the Management Agreement to come to that conclusion.

By article XXI the first plaintiff has to assist in obtaining finance in the sum of US$5 million for the defendant's project for developing the hotel and if required to provide security for the said loan. The first plaintiff arranged with the First National City Bank for a loan of US$5 million to the defendant. In accordance with the debenture entered into between the defendant and the First National City Bank the defendant granted to the First National City Bank a first legal mortgage of the whole of its land and buildings not only the hotel premises but also the land and buildings which are excluded from the Management Agreement by way of security. In terms of the said debenture the defendant was required to obtain a guarantee of completion or performance bond in the names of the First National City Bank and the first plaintiff and such guarantee was given. The said debenture and mortgage were fully discharged on March 9, 1973, as the defendant was able to negotiate a more substantial loan from a local bank on more favourable terms and on the security of a first mortgage only.

By article III the hotel was to be constructed in accordance with plans and specifications approved by the first plaintiff and the defendant was to completely furnish and equip the hotel in accordance with a schedule of inventory approved by the first plaintiff.

By article IV the first plaintiff is to operate the hotel as a Holiday Inn and, so far as practicable to do so in accordance with the procedures, practices, management technique and other rules of operation used by the first plaintiff in the operation of its other company-operated Holiday Inns. And the defendant agreed not to interfere or involve itself in any way with the day to day operation of the hotel.

By article V (i) the first plaintiff is to hire, supervise direct the work of and discharge all personnel working in the hotel and the first plaintiff is vested with absolute discretion in the hiring and discharging and supervision and direction of such personnel; (ii) all such personnel including the Innkeeper, are in the sole employ of the defendant and are not in the employ of the first plaintiff; (iii) the defendant will not interfere with or give any orders or instructions to the personnel employed on the premises; (iv) the first plaintiff will be responsible for and shall pay its own employees who are engaged in the performance of duties imposed under the Management Agreement and (v) the first plaintiff will consult and co-ordinate with the defendant on general personnel policies and compensation levels but the first plaintiff has the ultimate discretion to establish its own policies and compensation levels for the hotel.

In my view, taking into consideration the articles that I have set out above, the Management Agreement is not a contract of service nor is it a contract involving personal service and that it is an agreement which the court will specifically enforce.

I am satisfied, having regard to the nature and scope of the Management Agreement and on the affidavit evidence before me that damages would be an inadequate remedy and that the balance of convenience is clearly in favour of the plaintiffs. In my view no injustice would be suffered by the defendant if the interim injunction is granted. Under the Management Agreement the first plaintiff is to manage and operate the hotel for a period of twenty years, unless sooner terminated as provided by the agreement, and the first plaintiff has a right to renew the agreement for three periods of ten years each. The first plaintiff has managed and operated the hotel for only seven months when the defendant purported to terminate the Management Agreement. The balance of justice is in favour of restraining the defendant from managing and operating the hotel under the Management Agreement.

Order accordingly.

Solicitors: *Drew & Napier; Allen & Gledhill.*

SINGAPORE SHUI HING COMPANY (PTE) LTD. v. SINGAPORE SING HUA POEY CHIN ASSOCIATION & ORS.

[O.C.J. (Chua J.) February 17, 1976]

[Singapore — Suit No. 1133 of 1973]

Landlord and Tenant — Rent controlled premises — Whether association competent to hold tenancy — New owner claiming for possession — Defendants alleging that one of their members and not the association was the tenant — Whether member was a tenant by estoppel.

The plaintiff was the owner of a rent controlled premises which it bought from one Madam Tay in 1971. The defendants were occupants of the said premises since 1938. The second, third and fourth defendants were trustees of the association at the commencement of the action. Before the trial of this action, the second defendant, one Lim Eng Peng died and the administrators of his estate were substituted the second defendants.

The plaintiff claimed for possession of the premises and contended that the Association (the first defendant) was not legally competent to hold a tenancy as it was an unincorporated body. The defendants alleged that Lim Eng Peng and not the Association was the tenant of the premises. They argued that Lim Eng Peng was a tenant of the premises by estoppel by virtue of the fact that a Notice to Quit of December 4, 1965 was sent to him by Madam Tay. The issue was whether in the circumstances of the case the defendants were entitled to set up an estoppel.

Held: (1) Lim Eng Peng was by mistake described as a tenant in the notice to quit and when the notice was not acted upon, it was replaced by a fresh notice addressed to the Association;

(2) there was no intention on the part of Madam Tay to induce Lim Eng Peng to believe that she recognized him as the tenant of the premises and Lim Eng Peng had never entertained such belief nor had he acted on this belief to his personal detriment;

(3) the fact that the Association had decided that Lim Eng Peng should be the tenant and hold the tenancy on behalf of the Association was a unilateral act on the part of the Association. This was without the knowledge and consent of Madam Tay and could not have the legal effect of making Lim Eng Peng the tenant of the premises;

(4) judgment must therefore be given for the plaintiffs.

Cases referred to:-

(1) *Indo-Australian Trading Co. Ltd.* v. *Hin An Huay Kuan* [1956] M.L.J. 193.

(2) *Maclaine* v. *Gatty* [1921] 1 A.C. 376.

(3) *Greenwood* v. *Martins Bank* [1933] A.C. 51.

CIVIL SUIT.

Eric Choa (*Kirpal Singh* with him) for the plaintiff.